85-1069

Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

CHARLES COE

Petitioner,

– against –

ADRIANNA COE

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES OF COURT OF APPEALS FOR THE THIRD CIRCUIT

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4 APP

QUESTIONS PRESENTED

Whether the United States Supreme Court should grant writ of certiorari to resolve conflicts and assure uniformity among the decisions of the Circuit Courts and prohibit application of the 127-year old doctrine of "Domestic Relations Exception" to:

(a) controversies involving the rights and guarantees of individuals under the United States Constitution [1];

(b) controversies involving Federal statutes[2];

(c) controversies involving tort damages[3]: and

(d) controversies dealing with contracts[4].

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1. e.g., due process, equal protection, prohibition of cruel and unusual punishment, parental rights to the companionship and society of their child.Amendments 5,8,9,14
2. e.g., 42 USC 1981-1985; 28 USC 1331, 1738A
3. e.g., refusal of visitation rights, intentional infliction of emotional distress, malicious prosecution, abuse of process, obstruction of justice.Amendment 9, 42 USC §1981 et seq.
4. e.g., consent order without agreement of all .

PARTIES TO THE PROCEEDING BELOW

The only parties to proceedings below are listed in the caption.[5]

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5. Additional parties for purposes of redressing the deprivation under color of New Jersey domestic relations laws of petitioner's equal civil rights under 42 USC §§1981 et seq. particualarly §1983 and for other cause of action, such as malpractice of law, would be [e.g., J. Breen who is not a bar member of the state of California appeared fraudulently as such before the Superior Court of California, Los Angeles County and obtained a stay order from judges thereof in C. Coe v. A. Coe; Arthur Maurello, Esq., the previous attorney of petitioner (failed to submit petitioner's evidence to Judge Sorkow, and violated the attorney-client privileged communication)]: Park Ridge Patrolman Abe Worth; Judges Arthur Leseman of Juvenile & Domestic Relations Court, Harvey R. Sorkow and Conrad Krafte of Superior Court of New Jersey, against whom petitioner would bring civil rights actions to which the principle of Judicial Immunity does not apply since they acted in clear absence of personal as well as subject matter jurisdiction when they rendered their final judgment respectively: Attorneys Breen and Maurello, supra; Co-respondent Mr. James Mesevage, and others (e.g., court reporter and law clerk who conspired with the judges involved herein).

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-against-

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Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner Charles Coe respectfully prays that writ of certiorari issue to review the judgment of the United states Court of Appeals for the Third Circuit entered in this proceeding on July 26, 1985.[6-8]

Footnote 6-8. Published in 770 F.2d No.2. Docket No. 84-5702

OPINION BELOW

No opinion of the court of appeals(App. A, infra) was rendered. The order of the Court of Appeals denying the petition in banc for rehearing is unreported (App. B, infra). The opinion rendered by the District Court for the District of New Jersey appears in the Appendix hereto (App. C. infra).

JURISDICTION

The judgment of the Court of Appeals, affirming the judgment of the District Court was entered on July 26, 1985. A timely petition for rehearing in banc was denied by the Court of Appeals on August 19, 1985. On November 14, 1985 Associate Justice William J. Brennan, Jr. extended the petitioner's time within which to file a petition for writ of certiorari to December 17, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Amendments to the United States Constitution provide in relevant part:

AMENDMENT 5:
No person shall * * * be deprived of life, liberty, or property, without due process of law * * *.

AMENDMENT 8:
* * * nor cruel and unusual punishments inflicted.

AMENDMENT 9:
The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT 14:
* * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws * * *.

2. United States Code, Title 28

§1331. Federal question
The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

§1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between--

(1) citizens of different states; * * *,

§1343. Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

* * *

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens * * *.

§1443. Civil rights cases

Any of the following civil actions * * * commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States * * *.

§1446. Procedure for removal

(b) [see Footnote (24)]

(e) Promptly after the filling of

such petition for the removal * * * which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.
* * * .

3. United States Code, Title 42
§1981. Equal rights under the law
All persons * * * shall have the same rights in every state * * * to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens * * *.

§1982. Property rights of citizens
All citizens of the United States shall have the same right, in every State and Territory to inherit, purchase, lease, sell, hold, and convey real and personal property.

§1983. Civil action for deprivation of rights
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State * * * subjects, or causes to be subjected any citizen of the United States * * * to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party impaired in an action at law, suit in equity, or other proper proceeding for redress.
* * * .

§1984. Omitted

§1985. Conspiracy to interfere with civil rights

* * * * *

(2) * * *, or if two or more persons conspire for the purpose of impeding , hindering,obstructing, or defeating, in any manner, the due course of justice in any State * * *, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons to the equal protection of the laws;

* * * * *

* * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occassioned by such injury or deprivation, any one or more of the conspirators

4. New Jersey Statutes

NJS 2C:25-13 [N.J. L.1982, c. 82,Sec. 7, eff. 7/23/82, superseding L. 1981, c.426, Sec.13,infra]

a. * * * A copy of the complaint shall be served on the defendant in conformity with the rules of the court. * * * . At the hearing the standard for proving the allegations in the complaint shall be the preponderence of the evidence.

The court shall consider but not be limited to the following factors:
(1) The previous history of domestic violence between the cohabitants including threats, harrassment and physical abuse;
(2) The existence of immediate danger to person or property;
(3) The financial circumstances of the cohabitants;
(4) The best interests of the victim and the child;
(5) Indetermining custody and visitation the protection of the victim's safety; and
(6) Whether the application was made in a reasonable time after the alleged act of domestic violence occured. [Emphasis Added].

b. At the hearing the juvenile and domestic relations court may issue an order granting any or all of the following relief:

* * * * * * *

(2) An order granting possession to the plaintiff of the residence to the exclusion of the defendant when the residence or household is jointly owned or leased by the parties PROVIDED THAT this issue has not been resolved nor is being litigated between the parties in another action. The court may amend its order at any time upon petition by either party; [Emphasis added].

5. EXTINCT NJS 2C:25-13 [N.J. L. 1981, c. 426, Sec. 13 -- Amended and superseded by L. 1982, supra]
   a. [NOTE: the six factors in the current statute, supra, were not required for consideration]
   b. [NOTE: "A copy of the complaint"

was not required to be served on defendant under this extinct statute. cf., Current NJS 2C:25-13(a), supra].

STATEMENT OF THE CASE

This action was initially instituted by Adrianna Coe ("Plaintiff") in New Jersey Superior Court, Chancery Division, Bergen County on November 29, 1982 to seek divorce from Petitioner, division of their marital property, her support and custody of their minor child on the ground of his extreme physical cruelty to her.

Petitioner of Japanese descent, a lawyer, appeared pro se and filed an Answer, denying all allegations of plaintiff together with a counterclaim[9] for divorce and child custody[10].

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9. Both the Answer and Counterclaim were striken out by default under the Final Judgment of Divorce(2/7/84) rendered without jurisdiction.
10. Plaintiff brought another action in the Juvenile and Domestic Relations Court against petitioner and succeeded in expelling petitioner from his law office and marital residence on the false ground of domestic violence without service of process violating due process of law, infra. *NJS 2C:25-13(a)[L. 1982]. Plaintiff was a N.J. resident as of Nov. 29, 1982.*

Federal Jurisdiction

Their marital residence alone, which petitioner also used as his law office, had a fair market value of $100,000 or more at the time of the commencement of this action with an existing mortgage of about $20,000. Petitioner had been a California resident since the middle of 1982 prior to plaintiff's "sham" divorce action under color of the state law. Therefore, the conditions for the diversity jurisdiction under 28 U.S.C. §1332 had been satisfied. See Footnote (19a), infra.

The case was removed to the U.S. District Court for the District of New Jersey pursuant to 28 USC 1441, 1443 and 1446 as a "racially based civil rights" case under 42 USC §1981 et seq. in order to avoid the imminent arrest by the state judge for petitioner's failure to pay under a pendente lite order of March 9, 1983 a monthly sum of approximately

$3,000, and imprisonment for an indefinite period of time until the arrears thereof have been paid off.

True Nature of the "Sham" Domestic Relations Action Under Color Of N.J. State Law

The nature of this action is a genuine "racially based civil rights" action involving issues of federal questions and torts claims. By the abuse of Judicial Power and oppression inflicted on petitioner by state judges, petitioner had to escape from the jurisdiciton of New Jersey[11] and became one of the estimated

11. *Judge Sorkow denied petitioner's motion to sell their marital residence for emergency reasons. Thus,* Petitioner faced immediate arrest and imprisonment indefinitely due to his inability to pay $3,000 approximately per month under Judge Hurvey Sorkow's pendente lite order of March 9, 1983 in spite of the fact that petitioner's Federal income tax returns for 1981 and 1982 show no taxable income. Judge Sorkow denied his right to produce evidence (e.g. medical reports from his physicians on his back-bone injury in August 1977 and on his current serious sickness). At the time the pendente lite order was entered, petitioner had been expelled from his law office and home by Judge Arthur Leseman of the court stated in Footnote (10), supra, *becoming homeless, starving and very sick without money.*

50,000 homeless in New York City, penniless, close to death from starvation, afflicted by serious diseases[12] without medical attention, exposed to the freezing cold[13] and on occasions tempted to commit harakiri[14]. Petitioner was driven to extremes to avoid the intolerable pains and sufferings, the shame of being arrested and imprisoned indefinitely by the state judges for his failure to pay $3,000 per month under the pendente lite order, supra, and was subject to Abuse

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He was a senior citizen and very week since 1977 while plaintiff, a professional had substantial income. Judge Leseman refused to decide on Charles Coe v. Adrianna Coe, DV 683-83 before him, failing to decide which party was the "victim" [NJS 2C:25-13(b), L.1982], and expelled him from his home contrary to the evidence presented.

12. *e.g., very frequent severe asthma attacks, severe arthritis on his both shoulders and legs, preventing him from walking from time to time, high blood pressure, ulcer, etc.*
13. *This punishment on petitioner who had not committed any domestic violence and is known for his high moral character, is against the constitutional prohibition of cruel and unusual punishment. Amendment 8.*
14. *The traditional Japanese way of suicide by samurai and Japanese officers to avoid arrest or shame.*

of Judicial Power by the state judges[15], depriving him of his liberty, property and all of his means of making a living, his life in fact, without due process, equal protection, without jurisdiction. Petitioner contends the situation was created by a conspiracy among judges, corespondent, plaintiff's attorneys and petitioner's former attorney. Petitioner's rights to sue,[16] conduct discoveries[17], and present his evidence[18], and his rights to be with his minor child[19] were entirely denied by them.[19a]

15. *Superior Court, Appellate Division, dismissed Petitioner's appeal from Judge Leseman's restraining order, but failed to give any notice of the dismissal to petitioner at the address he designated for the service of the decision.* Amendments 5, 14.
16. *Judge Sorkow* refused to *accept petitioner's complaint; see Footnote (11), supra. Judge Leseman's refusal to decide petitioner's case, see Footnote (11), supra.*
17/18. *Judge Sorkow struck out petitioner's Interrogatories in their entirety. As to his refusal to address to plaintiff's evidence, see Footnote (11), supra. Judge Leseman refused to see petitioner's evidence; and gave the exclusive custody of child to plaintiff.*
19. *Both Judges Leseman and Krafte terminated*

Abuse of Judicial Power and Ineffective Adversary System

During the above-mentioned deprivation proceedings before the state courts in Bergen County, New Jersey, petitioner learned to his prejudice that the Adversary System of justice stopped functioning in its entirety where the state judges were able to deny Due Process, Equal Protection, and other constitutional rights of the petitioner and were able to ignore state laws and the hard facts. Petitioner had no money to cover attorney fees and court costs and the impartial federal courts which are the only forum to redress damages inflicted, abstained even though the requirements for absention have not been satisfied. As a result, the maxim "Where there is a wrong done, with injury, there is a

the close father-son relationship without procedural due process. See the Polovchak case, infra. 19a. Being Federal Question and Civil Rights case no diversity of citizenship is required.

remedy" has been contravened. The Federal courts' abstention has prevented petitioner from having a day in the impartial Federal court. See Dancy v. U.S., 361 F.2d 75 (CA DC 1965).

Judge Krafte, supra, tried to prosecute petitioner as a criminal by writing a letter to the Bergen County Prosecutor, with copies to Chief Justice of N.J. Supreme Court and ethics committees. Petitioner intended to write a Memorandum immediately before his death on Domestic Relations Exception and Judicial Immunity.[20] He chose a meaningful death to protest the faulty legal system and Abuse of Judicial Power rather than to prolong his life meaninglessly where his purpose of life, i.e., his devotion to the judicial science, had come to an end at that time, and he had no way out.[21]

20. EC 8-1 states that lawyers are especially qualified to recognize deficiencies in the legal system.
21. See Footnotes (5) and (19), supra.

Transfer Of Venue From Bergen County

Just before his attempted suicide, petitioner received a copy of Chief Justice Robert N. Wilentz's Order transferring sua aponte the venue of this case to Passaic County. He was overcome by shock and disbelief. He chose to live on to continue to work for the improvement of the law and judicial system.[22]

NO STATE LAW MATTER TO BE DECIDED BY THIS COURT

Under the Final Judgment Of Divorce of February 7, 1984 which was entered on April 30, 1984, the husband and wife status is no longer in issue, nor is the status of the child (e.g., custody, visitation rights). There is no room for the application of Demestic Relations Exception. See p.24.

22. E.g. American courts should not treat a lawyer-defendant as if he were a criminal, especially when the court has deprived him of his liberty and property and denied his motion for a pro bono attorney appointment& venue change. Hon. Wilentz stated in "Advocate" of June 1985: "I have absolutely no doubt that some lawyers have been treated unfairly. * * * by judges". See "Who's Who In American Law, 4th Ed." 556 *Takahima Hideo*

REASONS FOR GRANTING THE WRIT

1. SINCE THE APPLICATION OF THE DOMESTIC RELATIONS EXCEPTION IS NOT ABSOLUTE BUT A DICTUM LEADING TO CONFUSING RESULTS, AND SINCE THE RULING OF THE THIRD CIRCUIT IN THIS CASE CONTRAVENES THE U.S. SUPREME COURT'S GRIFFIN CASE AND CONFLICTS WITH DECISIONS OF OTHER CIRCUITS, DETERMINATION BY THIS COURT IS NECESSARY TO ASSURE UNIFORMITY OF FEDERAL PRACTICE ON THIS ISSUE

The U.S. District Court remanded[23] this case to the state court in Bergen County, New Jersey on the ground that "in essence" District Judge Ackerman found that the Federal court "lacked subject matter jurisdiction over the matrimonial action".[24]

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23. *Remanded to Superior Court, Bergen County on 4/26/84.*

24. *District Court Judge Ackerman stated in open court on April 23, 1984 other grounds for remand: (i) Petitioner stated that he was a N.J. resident. The error was corrected by filing with the federal court copies of his California resident return of 1982 and other evidence pursuant to Reynolds v. Adden, 136 US 348, 10 Sup.Ct 843, 34 L.Ed 360 (1889).*

(ii) Petitioner "improperly and belatedly recharacterized the action" because no amended Complaint was filed. His view contravenes the provisions under 28 USC §1446(b) 2d Par., reading "If the case stated by the initial pleading is not removable, a petition for removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order

The ground for the remand stated above is similar to that expressed by the Court in Barbara v. Barbara, 62 U.S.(21 How.) 582, 16 L.Ed. 626 (1859), stating by way of DICTUM that it disclaimed "altogether any jurisdiction in the courts of the United States upon the subject of divorce * * *" without any proper legal reasoning. No legal authority to support such position was cited in the dictum.

Since 1859 this ill-considered dictum has become the basis for application of the Domestic Relations Exception to Federal diversity jurisdiction supported by a series of ill-construed cases[25] despite the Griffin case, infra, on Page 19.

or other paper from which it may first be ascertained that the case is one which is or has become removable. Please note the use of term "under color of."
(iii) "There is no Federal question presented". This view does not seem to be sound since civil rights under Civil Rights Acts are definitely Federal questions. In addition there are many constitutional issues. See Foot-note (1), supra.

25. E.g., Sims v. Sims, 175 US 162, 20 S Ct 58, 44 L Ed 115; In re Burns, 136 US 586, 10 S Ct 850, 34 L Ed 500 (1890); De La Rama v. De La

The exception has long been criticized by judges and legal scholars as an ill-considered and antiquated opinion inadaptable to modern social conditions.[26]

Judge Gibbons of the Third Circuit, dissenting in the Solomon case, supra, pointed out: "* * * the source of confusion arose from misapplication of dicta in cases such as the Barbara case * * *"

Judge Adams of the Third Circuit in Flood v. Braate, 727 F.2d 303 (C.A. 3, 1984) stated:

> "We find no cases declining federal jurisdiction on the basis of the domestic relations exception when a litigant has otherwise made out a well-pleaded and substantial complaint alleging federal subject matter jurisdiction."

Various Circuits have on many occassions assumed subject matter jurisdiction over disputes involving domestic relations, Bar-

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Rama, 201 U.S. 203, 26 S.Ct. 485, 50 L.Ed. 765 (1906).

26. *E.g., Propovici v. Propovici, 30 F2d 185 (ND Ohio 1927); Spindel v. Spindel, 283 F Supp 797 (ED NY 1968); Phillips, Nizer, Benjamin, Krim, Baloon v. Rosenstiel, 490 F2d 509 (CA 2 1973);*

bara, supra, notwithstanding.

A law should evolve to be adaptable to new social changes. The Court in the Barbara case, supra, expressed its reasons for the Domestic Relations Exception on the basis of the common-law principle, i.e. husband and wife do not qualify for diversity citizenship, and as a matter of fact, the subject matter of disputes in domestic relations cases does not exceed the jurisdictional amount. Such is no longer the case today in our modern society.

The Supreme Court in **Griffin v. Griffin**, 327 U.S. 220, 66 S.Ct. 556, 90 L.Ed.635 (1946), reh'g den'd 328 U.S. 876, 66 S.Ct. 975, 90 L.Ed.1645, took subject matter jurisdiction and reversed state court decision on the alimony issue. See page 26, infra.

Solomon v. Solomon, 516 F2d 1018, 1013 (CA 3, 1975); "Federal Courts - The Continued Vitality and Questionable Validity of the Domestic Relations Exception to Diversity Jurisdiction - Bennett v. Bennett, 682 F2d 1039 (DC Cir 1982)" 56 Temp L R 228. A complete analysis of the Dicta has been done in the Spindel case, supra.

The law on this narrow point is still in the making. However, it has been well and uniformly established today that the Federal courts should not

> "**simply avoid all diversity cases** having intra-family aspects."

Cole v. Cole, 633 F.2d 1983, 1088 (CA 4, 1980). Thus, the out-of-date dicta is neither absolute nor conclusive. E.g., Daily v. Parker, 152 F.2d 174 (CA 7 1945).

For the reasons stated above, and by virtue of the Griffin case, petitioner believes that it is time indeed for this Court to resolve this century-long confusion and to decide this case in order to assure uniformity of Federal court decisions on this issue.

Moreover, if this Court grants the petition, then in accordance with the correct legal reasoning and other legal precedent cited herein, especially the Griffin case, the Third Circuit's decision in this case should be reversed.

2. THE THIRD CIRCUIT, IN FAILING TO ADDRESS THE ISSUE OF WHETHER DEPRIVATION WITHOUT DUE PROCESS OF PETITIONER'S CONSTITUTIONALLY PROTECTED LIBERTY INTEREST IN THE COMPANIONSHIP AND SOCIETY OF THE CHILD AND COMPELLING PETITIONER TO LIVE APART FROM HIS FAMILY BY STATE JUDGES AND CONSPIRATORS, IS REMEDIABLE UNDER 42 USC 1983, SIGNIFICANTLY DEPARTED FROM DECISIONS OF OTHER CIRCUITS AND THE GRIFFIN CASE

The Fourth, Sixth, Seventh and Ninth Circuits have assumed subject matter jurisdiction on the issue whether the deprivation of defendant, without Procedural Due Process, of his constitutionally protected liberty interest in the companionship and society of their minor child born out of marriage, or of his rights to live with his family.[27] *Amendment 9.*

27. The Courts in Kelson v. City of Springfield, 767 F2d 651 (CA 9 1985) and Hooks v. Hooks, 771 F2d 935 (CA 6 1985) held that said deprivation is remediable under 42 USC 1983. The Court in Polovchak v. Meese, 774 F2d 731 (CA 4 1985) remanded the case to the District Court to fashion a remedy, holding that the requirements of the Procedural Due Process must be strictly adhered in the state intervention that results in the termination of the close parent-child relationship.

The Court in Schondel v. McDermott, 775 F2d 859 (CA 7 1985) held that the state or local government that forces a person to live apart from his family deprives him of a form of lib-

Nevertheless, the Third Circuit and the District Court refused to consider the merits of petitioner's claims that he had been deprived of his custody and visitation rights and forced to live apart from his family. See Footnotes 17, 18 and 19, and Pages 10 through 14 inclusive.

By virtue of the **Griffin** case, supra, and the existing conflicts between the decision of the Third Circuit in this case on one side and decisions of Fourth, Sixth, Seventh and Ninth on the other side, the differences must be ironed out by this Court and the conflict must be resolved to ensure uniformity of law.

If the petition is granted, then for the legal authorities stated herein, the decision should be reversed.

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berty that is protected by Due Process of the Fourteenth Amendment. The family rights which the Due Process clause protects have substantive dimensions so that unreasonable deprivation may be unconstitutional even if it involves no procedural irregularity.

As to the facts in this case, see FN 17/18, 19.

3. THE THIRD CIRCUIT, IN FAILING TO ADDRESS THE ISSUE WHETHER DOMESTIC RELATIONS EXCEPTION BARS PETITIONER FROM HIS CONSTITUTIONAL RIGHTS FOR TORT CLAIMS ON INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS FOR PAST BREACHES OF HIS VISITATION RIGHTS AGAINST PLAINTIFF WHO KEEPS THE CHILD SEPERATED FROM PETITIONER DESTROYING THE FATHER-SON RELATIONSHIP, MALICIOUS PROSECUTION, ABUSE OF PROCESS AND OBSTRUCTION OF JUSTICE, CONFLICTS WITH OTHER CIRCUITS, A DETERMINATION BY THIS COURT IS NECESSARY TO ASSURE UNIFORMITY OF FEDERAL PRACTICE ON THIS ISSUE

The real nature of the cause of action (i.e., "sham" domestic relations action under color of New Jersey state law) controls the nature of this action, that is, "racially based civil rights" violations.[28] Therefore, the Domestic Relations Exception should not bar petitioner from his tort claims.

Secondly, there is a long series of court cases[29] holding that any cause of action arising out of previous wife's behavior destroying the relationship between the father and his son "would not be fore-

28. Produce Terminal Realty Corp. v. N.Y., N.M. & H.R. Co, 116 F Supp 451, 453 (D Mass 1953).

29. E.g., Cole, supra; Raftery v. Scott, 756 F2d 335 (CA 4 1985)(for intentional infliction of emotional distress); Wasserman v. Wasserman,

closed from a hearing in Federal court because it partook of some intra-family aspects. For petitioner's termination of marital status, see the Final Judgment Of Divorce at page 15.The Fourth Circuit in Kelser v. Anne Arundel Cty Dept. of Social Service, 679 F.2d 1092 (CA 4 1982) held that a Federal court decision not requiring the adjustment of family status or establishing familial duties, does not contravene the Domestic Relations Exception to Federal diversity jurisdiction.

The Ninth and D.C. Circuits[30] held that the Domestic Relations Exception did not apply to the former husband's suit against his former wife, seeking monetary damages for the past breaches of his visitation rights granted by the state court, as the action was based on the claim of intentional tortious interference that did not

671 F2d 335 (CA 4 1985)(for intentional infliction of emotional distress). See Page 15.

30. McIntyre v, McIntyre, 771 F2d 1316 (CA 9 1985)

implicate questions of spousal or parental status.

The Third Circuit in Losh v. Borough of Parkeburg, 736 F.2d 903, 907 (CA 3 1984) held that malicious prosecution[31] is actionable under 42 U.S.C. §1983. See pp. 26-29, for abuse of process and obstruction of justice ; in connection with the civil rights violations.

By virtue of the Griffin case as discussed elsewhere, and in order to promote uniformity of law, the conflicts between the Third Circuit on the one hand and the District Of Columbia Circuit, Fourth and Ninth Circuits on the other hand should be ironed out. If the petition is granted, for the legal authorities and the facts in this case, the decision of the Third Circuit should be reversed.

Bennett v. Bennett, supra, at p.19.

31. *See NJS 2C:25-13(b) providing that the court may amend its order at any time. This action seeks an award of damages because of plaintiff frustrating whatever divorce aspects remained.*

4. THE THIRD CIRCUIT'S FAILURE TO ADDRESS THE ISSUE OF WHETHER THE DOMESTIC RELATIONS EXCEPTION SHOULD BAR THE FEDERAL COURTS FROM ACCEPTING SUBJECT MATTER JURISDICTION WHEN PURE QUESTION OF CONSTITUTION OR FEDERAL LAW INCLUDING CIVIL RIGHTS ACTS ARE PRESENT, SIGNIFICANTLY DEPARTED FROM THE U.S. SUPREME COURT'S GRIFFIN CASE AND DECISIONS OF OTHER CIRCUITS

(a) QUESTION OF CONSTITUTIONAL LAW:

Many Circuits have assumed jurisdiction even if questions arose out of domestic relations disputes when pure questions of constitutional law are present.[32] The U. S. Supreme Court in the Griffin case, supra, assumed subject matter jurisdiction over controversies arising out of alimony, and held that the state court judgment was not enforceable because of wanting in Procedural Due Process as the court failed to give further notice of the time and place for further proceedings.[33]

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32. *Kelson (CA 9), supra, Hooks (CA 6), supra, Hernstadt v. Hernstadt, 373 F2d 316 (CA 2 '67).*
33. *In the instant case, Judge Krafte tried this case without giving notice to petitioner.*

(b) QUESTION OF FEDERAL STATUTES:

The Third Circuit in Flood, supra, and DiRuggiero, *infra*, assumed subject matter jurisdiction even though questions arose out of domestic relations controversy when the Federal law question under the Parental Kidnapping Prevention Act [28 U.S.C. §1738A]("PKPA") was present.

District Judge Ackerman stated in open court on April 23, 1984, "There is no Federal question presented in the Complaint" even though petitioner's Petition For Removal clearly stated that this is a civil rights case. See Footnote (24 ii) at p. 16.

The Civil Rights Acts as Federal statutes are on an equal level with the PKPA and those laws are equally enacted by the Congress as law of the land. Petitioner has been seeking redress under 42 U.SC. §1981 et seq., especially §1983. For facts in this case, see pages 10 through 14 inclusive.

(c) ADJUDICATION OF CIVIL RIGHTS VIOLATIONS:

The Sixth Circuit in the Hooks case, supra, stated at page 942:

> " * * * While plaintiff's claim arises out of a custody dispute, adjudication of the alleged civil rights violation to the extent it seeks damages does not require the court to exercise jurisdiction over or resolve any of those state law matters within the scope of the domestic relations exception. * * * See also DiRuggiero, 742 F.2d 1009, 1020 (domestic relations exception does not apply to state law tort claim of child abduction). * * * "

Clearly the adjudication of civil rights violations is a type of the Federal questions. Therefore, case law[34] thereon should apply to civil rights cases; See the Stana case in support of this appeal.

(d) VALIDITY OF CONSENT ORDERS ABSENT THE AGREEMENT OF ALL PARTIES:

By conspiracy between petitioner's previous attorney and others, Judge Sorkow, supra, caused a "consent order" entered on December 23, 1982 to petitioner's prejudice while he was in Los Angeles, Calif-

ornia. Said Consent Order failed to conform to the agreed upon terms. Judge Sorkow denied petitioner's motion to vacate the order.

The Sixth Circuit in the Hooks case, supra, held that a consent order,

> "must be interpreted as a contract to which the rules governing contract interpretation apply * * * A valid consent judgment cannot be rendered by a court absent the agreement of all parties thereto * * * , and must strictly conform to the agreed upon terms."

Judge Sorkow's consent order should be vacated.

By virtue of the Griffin case, supra, and other legal authorities cited herein, petitioner respectfully prays that this petition be granted. Moreover, if this Court grants the petition, the precedents would require reversal of the Third Circuit's decision in this case.

34. eg State Of Georgia v. Rachel, 384 US 780, 86 S Ct 925, 16 L Ed 925 (1966); Stana v. Sch. Dist. No. 85-3004 (CA 3 10/22/85) (a §1983 action for lack of due process may be maintained in Fed. courts).

C O N C L U S I O N

For the foregoing reasons, a writ of certiorari should issue to review the judgment of the United States Court Of Appeals for the Third Circuit.

Respectfully submitted,

CHARLES HIDEO COE, P.A.

By: Theodore R Giuttari

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APPENDIX

APPENDIX A
JUDGMENT ORDER AFFIRMING
JUDGMENT OF THE DISTRICT COURT

UNITED STATES COURT OF APPEALS
for the
THIRD CIRCUIT

NO. 84-5702

ADRIANNA COE
V.
CHARLES COE,
Appellant

On Appeal from the United States District Court for the District of New Jersey
(C.A. No. 83-4777)
(Honorable Harold Ackerman)

Submitted Under Third Circuit Rule 12(6)
July 10, 1985
Before: Adams, Garth and Becker, Circuit Judges

JUDGMENT ORDER

After considering the contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

/S/ A.M. Adams
Circuit Judge

ATTEST:

Chief Deputy Clerk

DATED: July 26, 1985

APPENDIX B: ORDER DENYING PETITION FOR REHEARING IN BANC

UNITED STATES COURT OF APPEALS
for the
THIRD CIRCUIT

NO. 84-5702

ADRIANNA COE,
v.
CHARLES COE,
Appellant
(C.A.No. 83-4777)
SUR PETITION FOR REHEARING IN BANC

Present: ALDISENT, Chief Judge, SEITZ, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER, STAPLETON, MANSMANN, Circuit Judges.

The petition for rehearing in bac filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regualr active service not having voted for rehearing by the Court in banc, the petition for in banc is denied.

BY THE COURT,

/S/ A.M. Adams
Circuit Judge

DATED: AUG 19 1985

APPENDIX C: OPINION ATTACHED TO ORDERS DENYING REHEARING AND MOTION TO DISMISS : and ORAL OPINION of 4/23/83

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NOT FOR PUBLICATION

OPINION

September 28, 1984

RE: Coe v. Coe, Civil Action 83-4777

By order dated April 23, 1984, this action was remanded to the Superior Court of New Jersey for the reasons set forth in my oral opinion of that date. In essence, I found that this court lacked subject matter jurisdiction over this matrimonial action. By letter opinion dated May 15, 1984, I denied defendant's motion to dismiss which had been filed prior to April 23, 1984 for the same reasons. On April 30, 1984 defendant filed a motion for reargument pursuant to Rule 121 of the Local Rules of this District. This motion is denied for the same reason: this court simply does not have jurisdiction over this case. An order is attached.

/S/ HAROLD A. ACKERMAN
U.S.D.J.

NOT FOR PUBLICATION

O P I N I O N

May 15, 1984

RE: Coe v. Coe, Civil Action 83-4777

By order dated April 23, 1984, this action was remanded to the Superior Court of New Jersey for the reasons set forth in my oral opinion of that date. In essence, I found that this court lacked subject matter jurisdiction over this matrimonial action. In view of my holding in this

regard, defendant's motion to dismiss filed prior to April 23, 1984 and made returnable on May 14, is denied. See attached order.

/S/ Harold A. Ackerman
U.S.D.J.

ORAL OPINION ON APRIL 23, 1984

[Excerpt* from TRANSCRIPT OF PROCEEDINGS 4/23/84]

MR. COE: Your Honor, have you read my Cross-motions and Briefs? There is nothing more to say except I have to address the fact I wasn't doing anything wrong on my part, I was prosecuted. And my life was almost lost.

THE COURT: Very well. [After stating the history of the proceedings of this case with regard to the removal jurisdiction and plaintiff's motion to remand this action, Judge Ackerman stated:]

For the reasons which follow, I have decided to grant plaintiff's motion.

[After reading the provisions of 28 U.S.C.§ 1441(a) and (b), Judge Ackerman stated:*[FULL TEXT]

The question before me is whether this Court would have had original jurisdiction over the Complaint filed in New Jersey Superior Court.

Petitioner's Complaint in the State Court is entitled "Complaint for Divorce." It is a matrimonial action seeking divorce, custody, support, equitable property distribution, Counsel fees and costs. Defendant has argued in his brief that the case he has removed from New Jersey Superior Court, though normally a matrimonial action, is in fact a case involving "racially based civil rights violations" by plaintiff's lawyer, Joycelyn A.Breen, and others for which he seeks relief under the Civil Rights Act, 42 U.S.C. Section 1981, 1982, 1983 and 1985. Defendant has apparently attempted tojoin parties, join claims and assert previously

unasserted Counterclaims in his Petition for Removal and in his brief in response to plaintiff's Motion to Remand for the first time.

To this Court's knowledge no amended pleadings have been filed by the parties and defendant may not improperly and belatedly recharacterize the action in an attempt to say in Federal Court. See 1A Moores Federal Practice Paragraph 0.160 at 183-84 (1982).

This is an action for divorce arising under New Jersey law. There is no Federal question presented in the Complaint as to confer subject matter jurisdiction under 28 U.S.C. Section 1331 on this Court.

Defendant also argues that there is a diversity of citizenship in this action so as to confer subject matter jurisdiction on this Court under 28 U.S.C. Section 1332. This argument is as frivolous as the first. Defendant, himself, admits that at the time the action was commenced both parties were residents of New Jersey. Only subsequent to the filing of the Complaint did he allegedly transfer his state of residence to California. Since diversity must exist at the time an action is commenced, this Court does not have jurisdiction on this ground, See Metcalf v.Watertown, 128 U.S.586 (1888). In addition, it is well established that there is a domestic relations exception to diversity jurisdiction in the Federal Courts. See Barbara v. Barbara, 62 U.S. (21 How.) 582, 584 (1859) Flood v. Braaten, 727 F.2d 303 (3rd Cir. 1984).

Because this Court has neither diversity nor Federal question jurisdiction over this action,it was improperly removed to Federal Court. Plaintffs Motion is granted and the case is remanded to the Superior Court of New Jersey with costs.

* * * * * * * *

*NOTE: Judge Ackerman's Opinion appeared above fully.